

ANTON PISTOTNIK
Claimant

A.V. PISTOTNIK, D.D.S.
Respondent

COMMERICAL UNION INSURANCE
Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD AND STIPULATIONS

ISSUES

(1) The nature and extent of claimant's disability.

- (2) Whether the prescribed massage chair was reasonably necessary medical treatment for claimant's injury.

The Fund had initially listed compensability of the claim as an issue on appeal. At the time of oral argument that issue was withdrawn.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds:

- (1) Claimant has a 20 percent permanent partial general disability.

Claimant, a dentist, suffered an injury to his back on May 16, 1993 when a chair with rollers went out from underneath him. He was later determined to have suffered a compression fracture at L2 and L4. Three physicians gave testimony relating to the nature and extent of the impairment. Dr. Daniel D. Zimmerman rated claimant's impairment at 27 percent to the body as a whole. He found loss of vertebral height at both the L2 and L4 levels, disc disease and spinal stenosis with continuing pain and discomfort and severely reduced range of motion. Dr. Michael P. Estivo, the primary treating physician, made similar diagnoses. He considered these conditions to have been caused, aggravated or exacerbated by claimant's injury. He adopted Dr. Zimmerman's ratings.

Dr. Estivo agreed to a different rating when asked to assume the ratings should be based solely on loss of vertebral height. Dr. Estivo suggested his rating would then be reduced to approximately 5 percent. On the basis of this testimony, respondent argues that the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised), support only a 5 percent impairment rating. The Award according to respondent should, therefore, be limited to the 5 percent.

The Appeals Board disagrees with respondent's argument. Use of the AMA Guides was not mandatory at the time of this injury. In addition, the testimony of all three physicians indicates claimant suffered from injuries and impairment in addition to the loss of vertebral height.

Dr. Ernest R. Schlachter conducted an independent medical examination at the direction of the Administrative Law Judge. He concluded claimant suffered a 20 percent permanent partial general impairment as a result of the injuries in this case. This rating was based upon a 50 percent compression fracture at L2. He found only soft tissue injuries at L4. He considered the spinal stenosis lesions to be ratable at 5 percent, plus an additional 1 percent for each level. There were three levels of stenosis. He also considered in his rating additional pain and loss of range of motion. He combined these to arrive at his 20 percent rating. The Administrative Law Judge adopted the rating by Dr. Schlachter and based the Award on a 20 percent permanent partial general disability. The Appeals Board agrees with the decision of the Administrative Law Judge and also awards benefits for 20 percent permanent partial general disability.

- (2) Claimant is entitled to reimbursement for the massage chair. K.S.A. 1992 Supp. 44-510 requires the employers to provide medical services reasonably necessary to cure and relieve the employee from the effects of the injury. In this case, claimant initially obtained a massage chair on his own. Dr. Estivo subsequently prescribed that chair. At the time

of his deposition, Dr. Estivo testified that the chair was a medical appliance reasonably necessary to cure and relieve the effects of the injury. On the basis of that uncontradicted testimony, which is not inherently unreasonable or improbable, the Appeals Board finds that the cost of the chair should be awarded and paid for as part of the medical expenses in this case.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated November 17, 1994, should be, and is hereby, modified:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Anton Pistotnik, and against the respondent, A.V. Pistotnik, D.D.S., and its insurance carrier, Commercial Union Insurance, and the Kansas Workers Compensation Fund, for an accidental injury which occurred May 16, 1993. Claimant is entitled to \$299 per week not to exceed \$100,000 for a 20% permanent partial general body disability.

As of April 12, 1996, there is due and owing claimant 154.29 weeks of permanent partial disability compensation at the rate of \$299 per week for a total of \$46,132.71, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$53,867.29 is to be paid at the rate of \$299 per week, until the total of \$100,000 is paid.

The claimant is entitled to reimbursement for the massage chair upon proper presentation of the statement for the costs of the chair to the respondent.

Pursuant to K.S.A. 1992 Supp. 44-536, the claimant's contract of employment with his counsel is hereby approved.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent, to be paid directly as follows:

Barber & Associates	
Transcript of Regular Hearing	\$383.00
Satterfield Reporting Services	
Deposition of Ernest R. Schlachter, M.D.	\$245.80
Deposition of Michael P. Estivo, D.O.	\$215.80
Deposition of Daniel D. Zimmerman, M.D.	\$234.80
Kelley, York & Associates, Ltd.	
Deposition of Tyrone D. Artz, M.D.	\$173.10
Deposition of Daniel Strunk	\$208.40

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
 Kendall R. Cunningham, Wichita, KS
 Garry Howard, Wichita, KS
 Shannon S. Krysl, Administrative Law Judge
 Philip S. Harness, Director